

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1685 OF 2005**

Dilip Ratnakar Gujar ...Petitioner

Versus

Central Bank of India & Ors. ...Respondents

.....

Mr. V.G. Mujumdar, counsel for Petitioner

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CORAM: B. H. MARLAPALLE, J.

DATED: 31ST MARCH, 2005

P. C.:-

1. Heard Mr. Mujumdar, the learned counsel for the petitioner who is the defendant No.4 in Special Civil Suit No. 1469 of 1991 filed by the respondent No.1 Bank for recovery of bad debts. The petitioner was the guarantor. It appears that he filed an application for amendment of his written statement on or about 25.10.2004 and the said application has been disallowed by the trial court vide his order dated 20.12.2004 and hence, this petition.

2. Though the impugned order is cryptic, para 7-A which was sought to be incorporated in the written statement reads as under:-

"7-A) Without prejudice this defendant submits that at the time when the alleged documents were executed on 20.4.1989, this defendant was not at all earning anything nor this defendant No.4 had any independent source of income. This defendant has been a commerce graduate and was in the year 1989 and even thereafter educated unemployed. Thus in view of this it was impossible that this defendant No.4 would stand as an alleged guarantor for the repayment of the said alleged amount given to defendant No.1 which initially in the year 1989 is alleged to be Rs.2,50,000/-. It is submitted that the plaintiff was very well aware of the same and any event shall be deemed to be aware of the same. This defendant No.4 never agreed and/or undertook to act as an alleged guarantor for defendant No.1 and that too for the alleged repayment of loan in such a large amount. The said agreement of guarantee was thus without any factual and legal basis. The said document was only a farce and came to existence only for the purpose of Bank Report and was not and has in fact not acted upon. This amongst other shows that this defendant No.4 has signed the said document only as a witness and not in any other capacity. Without prejudice and also by way of alternative submission this defendant

No.4 says that the said agreement of guarantee is thus without factual and legal consideration. Thus the suit claim as made by the plaintiff on the basis of these documents and more so the alleged agreement of guarantee is bad in law and liable to be and as such be dismissed. It is clear that the said such documents as filed by plaintiff are NOT binding upon this defendant No.4".

3. The reply filed by the plaintiff Bank to the said amendment application clearly stated that the amendment sought was not of warranted in any nature and it was in fact the additional pleadings which could have been taken up right at the beginning when the written statement was filed. It was further pointed out that the petitioner had signed all the documents when he came as a guarantor for the loan advanced to the respondent No.2 Firm. The rejection of the application by the trial court therefore, does not call for any interference in this petition.

4. Hence, the petition is rejected summarily.